

Rodriguez, Roberto

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From: McWhorter, Scott  
Sent: Friday, April 29, 2016 3:54 PM  
To: Matsuda, Thomas K  
Cc: Grisier, Mary; Rodriguez, Roberto; TROMBADORE, CLAIRE; Kam, Ann M; TenBrook, Patti  
Subject: Syngenta Show Cause Letter  
Attachments: Ponsi Trivisvavet.PDF

Hi Tom,

Attached is the show cause letter sent today to Syngenta related to the January 20, 2016 incident at the Kekaha facility.

Sincerely,

Scott McWhorter  
FIFRA Section  
Enforcement Division, EPA Region 9  
75 Hawthorne Street (ENF-3-3)  
San Francisco, CA 94105  
415-972-3584



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street  
San Francisco, CA 94105-3901

APR 29 2016

CERTIFIED MAIL:7001 0320 0002 0253 8959  
RETURN RECEIPT REQUESTED  
RECEIPT NO.

Ponsi Trivisvavet  
President  
Syngenta Seeds, LLC  
11055 Wayzata Boulevard  
Minnetonka, MN 55305

Re: Alleged Violations of the Federal Insecticide, Fungicide and Rodenticide Act

Dear Mr. Trivisvavet:

This letter is to notify you that the U.S. Environmental Protection Agency ("EPA" or "the Agency") is prepared to issue a civil administrative complaint against Syngenta Seeds, LLC ("Syngenta Seeds") pursuant to Section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. § 136l. The proposed enforcement action will allege that Syngenta Seeds has violated Section 12(a)(2)(G) of FIFRA, 7 U.S.C. § 136j(a)(2)(G), by using a registered pesticide in manners inconsistent with its labeling. This action will allege that Syngenta Seeds did not comply with the Worker Protection Standard, set forth at 40 C.F.R. part 170, in a number of ways, including but not limited to: (1) failing to prevent workers from entering a treated area where a pesticide had been recently applied; (2) failing to notify workers of recent pesticide applications; (3) failing to provide reasonably accessible decontamination supplies to workers; and (4) failing to make available prompt transportation to an appropriate emergency medical facility for exposed workers. The complaint will seek a civil penalty for these violations.

At this time, we are extending to you the opportunity to advise the Agency of any factors or information you believe the Agency should consider before issuing a civil administrative complaint. Such information may include any evidence of reliance on compliance assistance provided by EPA, misidentification of the proper party, or financial information relevant to your ability to pay a civil penalty. Even if you are unaware of any mitigating or exculpatory factors, we are extending to you the opportunity to commence settlement discussions concerning the above-described violations.

In addition, please review the attached Small Business Regulatory Enforcement and Fairness Act ("SBREFA") Information Sheet that is designed to provide information on compliance assistance, as well as to inform small businesses of their rights to comment to the SBREFA Ombudsman concerning EPA enforcement activities. Be aware that SBREFA does not eliminate your responsibility to respond to a complaint, information request, or other enforcement activity within the allowed time nor does it create any new rights or defenses under the law.

It is our intention to file a civil administrative complaint thirty (30) calendar days after your receipt of

this letter, unless you first advise us of substantial reasons not to proceed as planned.

Also, we are providing information about the EPA's Supplemental Environmental Project ("SEP") Policy in the event that you are interested in performing a SEP as part of a settlement in this case. A SEP is an environmentally beneficial project that a violator voluntarily agrees to perform, in addition to actions required to correct the violation(s), as part of an enforcement settlement. A SEP provides benefits that could not otherwise be obtained as injunctive relief or mitigation. In return, EPA agrees to reduce the monetary penalty that might otherwise apply as a result of the violation(s). SEPs must meet certain legal requirements. An overview of the requirements for a SEP as well as the SEP Policy can be found at <http://www2.epa.gov/enforcement/supplemental-environmental-projects-seps>.

EPA also encourages consideration of Next Generation compliance tools in all civil enforcement cases and incorporated in administrative settlements whenever appropriate. These tools include advanced monitoring, independent third party verification of a settling party's compliance with settlement obligations, electronic reporting and public accountability through increased transparency of compliance data. See "Use of Next Generation Compliance Tools in Civil Enforcement Settlements" Memorandum from Cynthia Giles, Assistant Administrator, dated January 7, 2015 ("Giles Memo"), available at <http://www2.epa.gov/compliance/next-generation-compliance-memorandum-next-gen-civil-enforcement-settlements>.

If you wish to discuss this matter or commence settlement negotiations, please contact Scott McWhorter, Enforcement Officer, at (415) 972-3584, or have your attorney contact James Miles, Chief, Pesticides and Tanks Enforcement Branch, at (202) 564-5161.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kathleen H. Johnson".

Kathleen H. Johnson  
Director  
Enforcement Division

Enclosure

cc: Thomas K. Matsuda, Pesticides Program Manager, Hawaii Department of Agriculture



## U.S. EPA Small Business Resources Information Sheet

The United States Environmental Protection Agency provides an array of resources to help small businesses understand and comply with federal and state environmental laws. In addition to helping small businesses understand their environmental obligations and improve compliance, these resources will also help such businesses find cost-effective ways to comply through pollution prevention techniques and innovative technologies.

### **Small Business Programs**

[www.epa.gov/smallbusiness](http://www.epa.gov/smallbusiness)  
EPA's Office of Small Business Programs (OSBP) advocates and fosters opportunities for direct and indirect partnerships, contracts, and sub-agreements for small businesses and socio-economically disadvantaged businesses.

### **EPA's Asbestos Small Business Ombudsman**

[www.epa.gov/sbo](http://www.epa.gov/sbo) or 1-800-368-5888  
The EPA Asbestos and Small Business Ombudsman (ASBO) serves as a conduit for small businesses to access EPA and facilitates communications between the small business community and the Agency.

### **EPA's Compliance Assistance Homepage**

[www2.epa.gov/compliance](http://www2.epa.gov/compliance)  
This page is a gateway industry and statute-specific environmental resources, from extensive web-based information to hotlines and compliance assistance specialists.

### **EPA's Compliance Assistance Centers**

[www.assistancecenters.net](http://www.assistancecenters.net)  
EPA's Compliance Assistance Centers provide information targeted to industries with many small businesses. They were developed in partnership with industry, universities and other federal and state agencies.

### **Agriculture**

[www.epa.gov/agriculture/](http://www.epa.gov/agriculture/)

### **Automotive Recycling**

[www.ecarcenter.org](http://www.ecarcenter.org)

**Automotive Service and Repair**  
[ccar-greenlink.org/](http://ccar-greenlink.org/) or 1-888-GRN-LINK

**Chemical Manufacturing**  
[www.chemalliance.org](http://www.chemalliance.org)

**Construction**  
[www.cicacenter.org](http://www.cicacenter.org) or 1-734-995-4911

**Education**  
[www.campuserc.org](http://www.campuserc.org)

**Food Processing**  
[www.fpeac.org](http://www.fpeac.org)

**Healthcare**  
[www.hercenter.org](http://www.hercenter.org)

**Local Government**  
[www.lgean.org](http://www.lgean.org)

**Metal Finishing**  
[www.nmfrc.org](http://www.nmfrc.org)

**Paints and Coatings**  
[www.paintcenter.org](http://www.paintcenter.org)

**Printing**  
[www.pneac.org](http://www.pneac.org)

**Ports**  
[www.portcompliance.org](http://www.portcompliance.org)

**Transportation**  
[www.tercenter.org](http://www.tercenter.org)

**U.S. Border Compliance and Import/Export Issues**  
[www.bordercenter.org](http://www.bordercenter.org)

### **EPA Hotlines, Helplines and Clearinghouses**

[www2.epa.gov/home/epa-hotlines](http://www2.epa.gov/home/epa-hotlines)  
EPA sponsors many free hotlines and clearinghouses that provide convenient assistance regarding environmental requirements. Some examples are:

**Clean Air Technology Center (CATC) Info-line**  
[www.epa.gov/ttn/catc](http://www.epa.gov/ttn/catc) or 1-919-541-0800

**Superfund, TRI, EPCRA, RMP and Oil Information Center**  
[www.epa.gov/superfund/contacts/infocenter/index.htm](http://www.epa.gov/superfund/contacts/infocenter/index.htm) or 1-800-424-9346

**EPA Imported Vehicles and Engines Public Helpline**  
[www.epa.gov/otaq/imports](http://www.epa.gov/otaq/imports) or 734-214-4100

**National Pesticide Information Center**  
[www.npic.orst.edu/](http://www.npic.orst.edu/) or 1-800-858-7378

**National Response Center Hotline** to report oil and hazardous substance spills - [www.nrc.uscg.mil](http://www.nrc.uscg.mil) or 1-800-424-8802

**Pollution Prevention Information Clearinghouse (PPIC)** - [www.epa.gov/opptintr/ppic](http://www.epa.gov/opptintr/ppic) or 1-202-566-0799

**Safe Drinking Water Hotline** - [www.epa.gov/drink/hotline/index.cfm](http://www.epa.gov/drink/hotline/index.cfm) or 1-800-426-4791

## Small Business Resources

### Stratospheric Ozone Protection Hotline

[www.epa.gov/ozone/comments.htm](http://www.epa.gov/ozone/comments.htm) or 1-800-296-1996

### Toxic Substances Control Act (TSCA) Hotline

[tsc-hotline@epa.gov](mailto:tsc-hotline@epa.gov) or 1-202-554-1404

### Small Entity Compliance Guides

<http://www.epa.gov/sbrefa/compliance-guides.html>

EPA publishes a Small Entity Compliance Guide (SECG) for every rule for which the Agency has prepared a final regulatory flexibility analysis, in accordance with Section 604 of the Regulatory Flexibility Act (RFA).

### Regional Small Business Liaisons

<http://www.epa.gov/sbo/rsbl.htm>

The U.S. Environmental Protection Agency (EPA) Regional Small Business Liaison (RSBL) is the primary regional contact and often the expert on small business assistance, advocacy, and outreach. The RSBL is the regional voice for the EPA Asbestos and Small Business Ombudsman (ASBO).

### State Resource Locators

[www.envcap.org/statetools](http://www.envcap.org/statetools)

The Locators provide state-specific contacts, regulations and resources covering the major environmental laws.

### State Small Business Environmental Assistance Programs (SBEAPs)

[www.epa.gov/sbo/507program.htm](http://www.epa.gov/sbo/507program.htm)

State SBEAPs help small businesses and assistance providers understand environmental requirements and sustainable business practices through workshops, trainings and site visits.

### EPA's Tribal Portal

[www.epa.gov/tribalportal/](http://www.epa.gov/tribalportal/)

The Portal provides access to information on environmental issues, laws, and resources related to federally recognized tribes.

### EPA Compliance Incentives

EPA provides incentives for environmental compliance. By participating in compliance assistance programs or voluntarily disclosing and promptly correcting violations before an enforcement action has been initiated, businesses may be eligible for penalty waivers or reductions. EPA has two such policies that may apply to small businesses:

### EPA's Small Business Compliance Policy

[www2.epa.gov/enforcement/small-businesses-and-enforcement](http://www2.epa.gov/enforcement/small-businesses-and-enforcement)

This Policy offers small businesses special incentives to come into compliance voluntarily.

### EPA's Audit Policy

[www2.epa.gov/compliance/epas-audit-policy](http://www2.epa.gov/compliance/epas-audit-policy)

The Policy provides incentives to all businesses that voluntarily discover, promptly disclose and expeditiously correct their noncompliance.

### Commenting on Federal Enforcement Actions and Compliance Activities

The Small Business Regulatory Enforcement Fairness Act (SBREFA) established a SBREFA Ombudsman and 10 Regional Fairness Boards to receive comments from small businesses about federal agency enforcement actions. If you believe that you fall within the Small Business Administration's definition of a small business (based on your North American Industry Classification System designation, number of employees or annual receipts, as defined at 13 C.F.R. 121.201; in most cases, this means a business with 500 or fewer employees), and wish to comment on federal enforcement and compliance activities, call the SBREFA Ombudsman's toll-free number at 1-888-REG-FAIR (1-888-734-3247).

Every small business that is the subject of an enforcement or compliance action is entitled to comment on the Agency's actions without fear of retaliation. EPA employees are prohibited from using enforcement or any other means of retaliation against any member of the regulated community in response to comments made under SBREFA.

### Your Duty to Comply

If you receive compliance assistance or submit a comment to the SBREFA Ombudsman or Regional Fairness Boards, you still have the duty to comply with the law, including providing timely responses to EPA information requests, administrative or civil complaints, other enforcement actions or communications. The assistance information and comment processes do not give you any new rights or defenses in any enforcement action. These processes also do not affect EPA's obligation to protect public health or the environment under any of the environmental statutes it enforces, including the right to take emergency remedial or emergency response actions when appropriate. Those decisions will be based on the facts in each situation. The SBREFA Ombudsman and Fairness Boards do not participate in resolving EPA's enforcement actions. Also, remember that to preserve your rights, you need to comply with all rules governing the enforcement process.

*EPA is disseminating this information to you without making a determination that your business or organization is a small business as defined by Section 222 of the Small Business Regulatory Enforcement Fairness Act or related provisions.*